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# CHAPTER SEVEN

## PROPERTY MANAGEMENT

### 7-1 PURPOSE, OBJECTIVES AND ADMINISTRATION

The property management function is in Office of Legal Services and it is staffed by a Property Manager and other support staff as may be assigned. Project level property management activities are performed by MDOT personnel assigned to project teams or MDOT Division Offices.

Property management supports project development by actively managing the occupancy of property during the preconstruction period and by removing improvements in an orderly, cost-effective manner to conform to the project schedule. The function also rents or sells property that is surplus to transportation needs, thus, returning property to an economic use and generating income. Property management also maintains property outside the operating right of way to minimize hazards and risks to the public.

#### 7-1.01 Objectives

The property management function is responsible for the following program objectives:

1. Exercise prudent stewardship over acquired property.
2. Secure acquired property, including buildings and other improvements, to minimize risk and injury.
3. Remove structures in an orderly, timely and cost-effective manner.
4. Receive revenue from sale or rental of property that is not otherwise needed for transportation purposes.
5. Maintain a current and inclusive inventory of properties that are excess to transportation needs.
6. Maintain effective coordination with other right of way functions and with MDOT Division offices.

#### 7-1.02 Scope of Property Management Activities

Personnel assigned to property management will advance the above objectives by performing the following activities. Each item is discussed in detail later in this Chapter:

1. Perform inspections of acquired property to determine if all items acquired are in possession of the Department and to insure that property is safe and secure.
2. Insure that property is adequately secured from unauthorized entry.
3. Arrange removal or correction of hazardous conditions (e.g., trash accumulations, contamination and infestations).
4. Manage rental of property, when appropriate, for the short term before needed for highway construction.
5. Dispose of structures and improvements on acquired right of way to clear the site for construction.
6. Rent or sell property that is surplus to transportation needs.
7. Cooperate with MDOT Division offices in proposals to use right of way air space, modify access control and implement MDOT's access management program.

#### **7-1.03    Organization and Responsibilities**

The Property Manager, a member of the Office of Legal Services staff, is responsible for general implementation of the property management program. The Property Manager will, under the direction of the Principle Real Estate Attorney, perform the following responsibilities:

1. Advise field project personnel on property management policy and practices, laws and regulations.
2. Interpret property management policy as it applies to unique or complex cases.
3. Review and recommend action on proposals for property rental or disposal of property or use of air rights.
4. Maintain the Statewide inventory of property that is not in use as highway right of way.
5. Exercise quality assurance measures that insure that property management activities are performed in a timely, efficient and cost-effective manner.
6. Coordinate effectively with Program Services staff, Project Managers, MDOT Office of Legal Services, MDOT Division Office Managers and project right of way personnel on property management matters involving these units.

**7-1.04    Laws and Regulations**

The following legal authorities control the property management function within MDOT:

1. Title 23 ***Maine Revised Statutes Annotated (MSRA)***:
  - a. Section 61            Vacation, Sale or Lease of Acquired Land,
  - b. Section 154-D       Notice to Vacate, and
  - c. Section 160           Property Management;
  
2. Title 23 ***US Code of Federal Regulations***:
  - a. Section 710.401       General,
  - b. Section 710.403       Management,
  - c. Section 710.405       Air Rights on the Interstate,
  - d. Section 710.407       Leasing, and
  - e. Section 710.409       Disposals.
  - f. Section 620 Subpart B Relinquishment of Highway Facilities

**7-1.05    Quality Assurance**

The goal of QA/QC in property management is to consistently achieve the objectives presented in Section 7-1.01. The Property Manager's responsibilities for quality assurance (QA) include maintenance of policies that comply with laws and regulations, policies that are effective and current, and policies that use best practices in the field of property management. In addition, QA includes advice and guidance to project and field staff that will enhance their knowledge and skill in performing the elements of property management for which they are responsible.

Quality is a shared responsibility of all who are involved in the property management function, including field staff involved on an intermittent basis. The Property Manager will emphasize commitment to quality by providing specific advice and instruction to field personnel on standards of performance in areas such as building inspection and security, building disposals and property rental.

Responsibilities of the Property Manager for Quality Control include the formal and informal review of the performance of property management activities at the MDOT Division Office and project level, including work by staff and by private contractors. The purpose of the reviews is to insure compliance with laws, regulations, policies and professional standards, and to identify opportunities to improve performance. The form and frequency of reviews will be determined in consultation with the Right of Way Policy Committee as set forth in Chapter 10.



## **7-2 ACQUIRED PROPERTY — SECURITY**

MDOT staff will act to insure the protection of acquired property from damage or theft during the period before it is needed for construction. Assigned staff will also take reasonable measures to protect the public safety and welfare from risks associated with the condition of, or access to, acquired property. Also, staff will insure that the Department takes possession of all fixtures and improvements acquired by the Department as part of the real estate acquisition.

### **7-2.01 Inspection of Property**

The Right of Way Mapper will notify the Property Manager of improved property to be acquired at an early stage in the project. The Property Manager creates a file for each parcel which identifies buildings, structures or other improvements to be acquired. The file is made available to the assigned right of way staff member on the project team for use in the inspection after acquisition and subsequent property management activities.

An assigned project staff member will perform a physical inspection of each improved property as soon as feasible after title vests with the State and after the building is vacant. The inspection will be performed with the approved appraisal in hand as a reference to what should be present on the site and its condition. The inspection will include the following determinations:

1. Presence and condition of all improvements included in the acquisition;
2. Public safety risk factors (e.g., swimming pools, open basements, trash accumulation);
3. Presence of hazardous contamination (see section 7-2.02);
4. Suitability of the improvements for sale or rental;
5. Personal property on site belonging to others;
6. Occupancy status of property; and
7. Need for rodent control measures.

The inspector will coordinate with other MDOT staff as necessary to resolve conditions noted in the inspection that require action. This may include safety and security issues, relocation status of occupants, rental agreements and recovery or accounting for property items improperly removed from the site. The Property Manager will advise the project and MDOT Division Office staff in handling unusual or sensitive issues that arise from the inspection. The inspector will record the inspection, significant findings and actions taken in a report or memorandum to the file.

The inspector will make arrangements for the transfer of keys and the final utility readings and turnoffs when the property is vacated.

**7-2.02    Safety and Security**

MDOT is responsible for reasonable measures to protect the public safety and secure acquired property to minimize potential damage or theft. The Department will take action as indicated in the following sections for conditions noted in the post-acquisition inspection.

**7-2.02(a)   Protection of Buildings**

Window openings on the basement, first and second levels, of vacant buildings will be boarded unless a determination is made that this measure is not necessary. Reasons for not boarding openings include imminent demolition or sale for removal, rental or adequate property fencing. Building security performance may be by MDOT maintenance staff or by private contract.

**7-2.02(b)   Protection of Site**

Accumulations of trash will be removed from acquired sites. Mowing or vegetation removal will be performed as necessary to prevent visual blight and conform to community standards. Priority will be assigned to the removal of potential hazards to children. This includes the removal of swimming pools or abandoned equipment, filling excavations, etc. MDOT staff will consider the imminence of highway construction in selecting the actions to protect sites. Properties will be posted against trespass if this is effective, although it may be counter effective in some areas, or if requested by adjacent owners or local officials.

**7-2.02(c)   Coordination with Community**

MDOT staff will consult as necessary with adjacent property owners, community organizations and public safety officials to coordinate its security actions, hear concerns and request assistance. Police and fire departments may provide more frequent patrols to vacant parcels. The MDOT Division Office will provide the name and phone number of a MDOT staff person for contact in case of emergency.

**7-2.02(d)   Hazardous Materials and Substances (Wastes)**

Upon the initial inspection of the premises and after it has been vacated by the former owner/tenant, there may be hazardous materials/substances found on the premises or property in the form of paints, cleaners, fertilizers, etc. Oil drums, cans, etc. may also be on the premises. In the event of these substances are found, contact the MDOT Environmental Office to arrange for removal.

The Property Manager will arrange to have the building inspected by a certified consultant for asbestos prior to any demolition. If there is evidence of any other hazardous materials/substances on the property, notify the MDOT Environmental Office to arrange an assessment.



If buildings are sold for removal before construction MDOT will make full disclosure to prospective purchasers of any known contamination. The purchaser accepts full responsibility to comply with environmental requirements of Federal, State and local law in the removal of improvements.

#### **7-2.02(e) Rodent Control**

It is important to identify rodent infestations or conditions which support infestations (e.g., garbage, trash, debris) at physical inspection or earlier. Rodents will migrate to adjacent property if their food source or habitat is disturbed. It is important to remove infestations as soon as they are identified; do not defer until buildings are demolished. The Property Manager should be advised of the discovery of need for rodent control measures.

Rodent control will normally be performed by contract with local licensed professional exterminators. If contractors are not available or cannot perform the service promptly, MDOT Maintenance or Right of Way staff will perform the rodent control.

MDOT staff assigned to rodent control will consult with local health, housing inspection or public safety authorities concerning methods, products and precautions that must be used in rodent control. Also, the lead person will consult with the Property Manager before beginning rodent control activities.

If MDOT staff performs rodent control, the sites will be reinspected periodically to remove carcasses, reset control measures and evaluate effectiveness. If the work is performed under contract, MDOT staff will perform inspections to insure the effectiveness of the contractor's actions.



### **7-3 PRECONSTRUCTION OCCUPANCY OF ACQUIRED PROPERTY**

Occupancy of property, after the date title passes to the State, is limited to preacquisition occupants (owners or tenants) pending their relocation.

#### **7-3.01 Occupancy by Previous Owner or Tenant**

Residential owner occupants and tenants in occupancy at date of MDOT acquisition are entitled to 90 days advance written notice of the date that they will be required to move. It is very important that the staff responsible for managing property on a project consult with the Relocation Manager concerning control dates for issuance of notices to vacate for residential occupants.

Persons in occupancy of property at acquisition will be permitted to continue in possession for a minimum of 90 days under terms defined in the Memorandum of Agreement (Form PM-1). This provides for the occupants acceptance of all risks and expenses arising from occupancy as compensation to MDOT during the 90-day possession period. The occupant may apply for an extension beyond the 90-day period. MDOT, at its discretion, may charge an additional amount as short-term rent during the extension period. The Property Manager may waive rent for residential occupants on recommendation of the Relocation Manager. The normal reason for waiver will be a finding of financial hardship that will prevent an occupant displacee from occupying comparable replacement housing. The rent waiver determination will be documented in the project file.

If rent is charged to the original occupants during the 90-day period immediately following acquisition, the amount is subject to appeal to the State Claims Commission. Rent charged after the initial 90-day period is not subject to State Claims Commission appeal.

Rent owed to MDOT by the original occupants of property when they vacate the property may be deducted from claims for relocation benefit payments. However, MDOT will not make such deductions if it would interfere with the ability of a residential displacee to purchase or rent replacement housing within their financial means. The Property Manager will consult with the Relocation Manager before authorizing a deduction from relocation claims.

#### **7-3.02 Rental of Acquired Property**

On information that the original occupant has vacated an improved property, the Property Manager will decide the disposition of the improvements. The usual decision will be to clear the improvement from the right of way by sale for removal or by demolition. Rental of property will be considered only if there is an extended time before the property is needed for construction, and the physical inspection (see Section 7-2.01) confirms that the property is suitable for continued use and occupancy.

When the decision is to rent property subsequent to acquisition, the Property Manager or qualified project staff assigned by the Property Manager will perform the following activities:

1. Secure prospective occupants by the most cost-effective means, including classified advertisement, bulletin board posting, and contacts with real estate agents, etc.
2. Determine fair rental in consultation with the Project Appraiser or Review Appraiser. The rent rate must be no more than would normally be charged for short-term occupancy in the area in which the property is located. The basis for the determined rent will be documented in the parcel file.
3. Determine any special conditions and limitations that will be placed in the rental agreement. This will include responsibility for maintenance and for structural repairs, allowed modifications to property and limitations on permitted uses.
4. Determine the reasonable rent security deposit.
5. Determine the liability insurance required of the occupant to hold the State safe from liability from property and casualty risks.
6. Prepare rental agreement (P/M-8) and present to the prospective occupant for execution.

The rental agreement will specify that the occupant will be required to vacate the property on 30 days notice and will not receive relocation payments or services of any kind.

The rental agreement will normally provide that the occupant is responsible for utilities, maintenance and repairs. If the occupant performs repairs that are significantly beyond routine maintenance, are unforeseen and are necessary to continued occupancy, the rent may be reduced. The Property Manager will decide on rent reduction requests based on the equities of the situation and the overall interest of the State.

The rental agreement will be effective when the Director, Bureau of Project Development, signs it.

The Property Manager will monitor project advertising schedules and issue a 30-day notice to vacate to occupants at least 60 days before the construction project is advertised. The security deposit held by MDOT will be returned after a final physical inspection of the site, final reading of utilities and surrender of keys. The security deposit returned will be reduced by any amount owed to the State or owed to third parties who file a lien against the property.

Rent delinquency of 60 days will be referred to the MDOT Office of Legal Services for collection. If the Office of Legal Services concurs, delinquent rental accounts may be placed with a private collection agency.

## **7-4 DISPOSAL OF STRUCTURES**

The Property Manager will perform planning and oversight required for the clearance of structures and improvements from the right of way in preparation for construction. Qualified Division Office or project personnel may be assigned to perform specific tasks in this process.

MDOT normally clears right of way by contract with private demolition firms. Clearance can also be performed by State forces or by the transfer of structure disposal to the highway construction contract.

### **7-4.01 Pre-Disposal Inspection**

Pre-Disposal inspection is a continuation of the process outlined in Section 7-2.02(d) and is an ongoing process between the MDOT personnel and the asbestos inspector. The inspector will prepare a memorandum that documents the inspection and presents conclusions. The memorandum will address the following points as applicable:

1. Presence, extent and type of asbestos;
2. Recommended remediation before disposal; and
3. Protective or remediative measures for the site.

The inspection report (memorandum) will be circulated to offices or persons who have an interest or who share responsibility for the project or the property. This includes the MDOT Environmental Office, Bureau of Maintenance and Operations, the Project Manager and the Project Resident. The report will be available to prospective bidders for structures and to demolition contractors.

### **7-4.02 Contract for Demolition or Removal**

Contract for sale and removal or demolition is the normal means of disposal of structures. Demolition by MDOT forces or inclusion in the highway construction project (see Sections 7-3.03 and 7-3.04) will be selected only if determined to be cost effective or if the highway construction project will be delayed by the time required for separate contract demolition.

The following steps will be followed in contracting for removal or demolition:

1. Prepare detailed descriptions and specifications for removal. The pre-disposal report may be referenced in the specifications and provided as a bid document.
2. Determine the amount of bid deposit by certified funds that will be required.
3. Develop performance period and provision for liquidated damages.
4. Prepare bill of sale for structures and improvements to be removed.

5. Advertise for a 2-week period in a local general circulation newspaper. Other cost-effective advertisement methods may be used in addition, particularly if they provide exposure to minority or women-owned businesses or individuals.

The advertisement will be published in accordance with applicable rules of the Maine Bureau of General Services and the MDOT Contracts Section pertaining to sale by bid. In addition, the following provisions will be included in the advertisement:

1. MDOT reserves the right to reject bids for any reason.
2. Bid deposit will be by certified funds (no personal checks).
3. Acceptance of successful bid is by approval of the Commissioner of Transportation.
4. Time is of the essence in meeting performance dates.
5. Successful bidder is responsible for compliance with all environmental regulations. The pre-disposal inspection report is a full MDOT disclosure only.

All certified checks for performance deposits or sale of structures will be payable to the Treasurer-State of Maine. Proceeds of sale will be routed to the MDOT Bureau of Finance and Administration. The revenue from sale of structures will be applied to reduce the net cost of the project. No Federal Highway Administration approvals or credits to Federal funds are required.

The Project Resident or the Property Manager will inspect the sites to verify the completion of demolition or removal and will release the performance guarantee if the work has been completed in conformance with the contract.

#### **7-4.03 Demolition in Highway Contract**

Demolition performed by the highway construction contractor will be approved if there is not sufficient time remaining to dispose by contract before the highway construction begins or if this is determined to be a lower cost than a separate structure-disposal contract. Also, buildings may be removed under highway contract if no responsible and reasonable bids were received in response to the advertisement for removal or demolition.

The Property Manager will advise the Project Manager at the earliest possible time if the need for demolition by highway contractor is anticipated. Early notification is necessary to include demolition in the bid documents, rather than as a potentially higher cost work order after the contract is advertised.

Jurisdiction over structures will be transferred to the contractor by contract or work order, and the keys will be provided through the Program Resident Engineer.

The Property Manager will complete the documentation by completing Forms PM – 3 and 5.

The responsible MDOT Project Engineer will perform the inspection for completion of demolition.

#### **7-4.04    Sale of Buildings for Removal**

The Property Manager will approve the sale of individual buildings for removal from the right of way if the buildings are determined to have a value for continued use. This can arise from the following circumstances:

1.    The structures have a positive value after cost of their removal from the right of way.
2.    Buildings are determined to have historic significance by the Maine Historic Preservation Commission and can be removed for preservation or for salvage of architectural parts.
3.    The buildings can be relocated or salvaged to meet a demonstrated community need.

If buildings have a positive net value after removal, they will be advertised in the manner described in Section 7-3.02. A provision will be placed in the advertisement that only positive amount bids will be accepted.

MDOT may transfer ownership of buildings having historic significance or community value to responsible governmental or non-profit organizations at no cost. Approval of the Commissioner of Transportation is required. The Property Manager will secure advice and recommendations of the MDOT Environmental Office concerning proposals for these transfers. The Department will condition transfers on the same criteria that are applicable to demolition contracts as to completion dates, environmental compliance and site restoration.

#### **7-4.05    Building Removal by MDOT Forces**

State Forces can remove buildings or improvements under unusual circumstances including the following:

1.    Fast response is necessary to protect public safety. If a building is threatening collapse, or if there are open pits, standing water, rubble from fire or storm, or other dangerous conditions, particularly if they attract children.
2.    Work cannot be performed economically under contract and State personnel are otherwise available.

If the demolition by State forces is anticipated, the Property Manager will confer with representatives of the Bureau of Maintenance and Operations to review work specifications, work schedule and environmental hazards. If the need for demolition arises from emergency

circumstances, the responsible manager will respond in the manner required to protect public safety.



## 7-5 SURPLUS PROPERTY

### 7-5.01 Surplus Property — General

Surplus property is real estate under the jurisdiction of MDOT, which is determined as not needed for transportation use. Surplus property may originate from the following actions:

1. Purchase of total takes where a part is required for right of way, leaving uneconomic remainders;
2. Changes in highway design plans after right of way acquisition;
3. Reconstruction of roads where portions of the existing right of way are not needed;
4. Removal of MDOT facilities such as maintenance yards, storage yards, rest areas and materials sites; and
5. Purchase of right of way that ultimately is not needed because of location or design changes or abandonment of project (see Section 7-5.02).

Sale or rental of surplus property usually originates from an inquiry by an interested party. All inquiries are recorded on Form PM-4, which also contains a checklist for review by the Department.

MDOT reserves the right to require payment of a deposit from a party that requests to purchase or lease surplus property. This will compensate the Department for the expense and resources in processing the request. The deposit may be applied to the purchase or rental. The deposit will be returned if the request is refused by MDOT after review or if the surplus property is disposed or leased to another party.

A Real Property Inventory is maintained (see Section 7-7.03) of all property in use or available for non-highway purposes. Properties listed in Categories 5, 7 and 8 are determined as surplus and subject to disposal or reuse. Occasionally, the properties are reclassified to reflect changes in the Department's transportation program.

Property subject to the Abandonment of Purpose provision discussed in Section 7-5.02 is considered for disposal as surplus property only after the described process is completed and the offer of first refusal to repurchase is rejected.

### 7-5.02 **Abandonment of Purpose (1 *MRSA* 815)**

In some cases, property that MDOT has acquired through eminent domain must be offered for sale to the condemnee or heirs on a first-refusal basis if it has not been used for the purpose acquired within eight years from the date of condemnation. This provision of 1 ***MRSA*** 815 was enacted May 31, 2001 and contains broad exemptions. This provision does not apply in cases where:

1. The property was taken in whole or in part using Federal funds or the eminent domain authority to take the property was derived from Federal law.
2. The property acquired does not meet state or municipal lot size or frontage requirements.
3. The property was taken to expand existing corridors used for transportation or utility purposes including highways, bridges, railroad lines or utility lines.
4. The property was acquired before October 1, 2001.
5. The property was acquired by voluntary transfer.

In cases where this legislation does apply, the following rules will apply in implementing Section 815:

1. Property is used for the purpose acquired if construction has begun within 8 years of the date of vesting.
2. The Statute provides for a reaffirmation of public purpose that will extend the 8-year period for an additional 3 years. Subsequent reaffirmations are permitted under the Statute.
3. The provisions of Section 815 apply without regard to relocation payments and services that the owners received during the period of State ownership.
4. The 8-year period need not expire for the Department to make a finding of abandonment of public purpose. The objective of the Statute is best served if the determination is made earlier than the 8 years allowed in the Statute.

The following process will be followed in an offer of first refusal pursuant to abandonment of purpose:

1. The Mapping and Research Supervisor will establish a Section 815 control date for each new right of way project. The control date will be 8 years after the vesting of the first property acquired for the project.
2. The Survey and Mapping Unit will advise the Property Manager of Section 815 control dates yearly by memorandum.
3. The Property Manager will maintain a log of project control dates and request a determination from the Program Managers upon expiration of each control date for projects that have not proceeded to construction. Determination alternatives include:
  - a. Project has been abandoned.
  - b. Project is deferred but is not abandoned.

The Program Managers will be asked to provide supplemental information necessary for the following steps in this process.

4. If the project has not been abandoned, the Property Manager will initiate a Reaffirmation of Public Purpose. This will conform to the requirements of Paragraph 1 in the Statute.
5. If the project has been abandoned, the Property Manager will notify, in writing, all property owners or their heirs of their right of first refusal to repurchase in the manner specified in Paragraph 2 of the Statute.
6. The repurchase will be offered at a price equal to compensation paid by MDOT plus an additional amount representing the monetary inflation based on the Consumer Price Index as defined in 36 **MRSA**, Section 5402(1) over the period the property has been in State ownership.
7. Property purchased under Abandonment of Purpose will be conveyed by Deed of Vacation.

If the notified owner or heirs refuse the right to repurchase, the property may be considered for disposal as surplus property in accordance with Sections 7-5.03 and 7-5.04. Failure to respond within 90 days of delivery of notification will be considered refusal.

Disposal of surplus property is normally initiated by an inquiry or request from an interested party. The inquiry may be from an adjacent owner, developer or a public agency. In unusual circumstances, the Department may advertise a property for sale by bid without having received a prior inquiry.

### **7-5.03    Surplus Property Determination**

The following applies:

1. The Property Manager in conjunction with the Program Managers will determine that the property proposed for disposal is not needed for present or foreseen transportation use. This determination will have been completed for property subject to the Abandonment-of-Purpose provision described in Section 7-5.02 above. In addition, the Property Manager will decide priorities for transfer if there is an indicated alternative public use or if there is an interest from an adjacent property owner.
2. The Property Manager in conjunction with the Program Managers decides alternatives and priorities for transfer after circulating a memorandum to interested MDOT departments and agencies inviting comments. The memorandum will describe the property and its proposed disposition and state a reasonable period in which responses will be considered (14 days is suggested). The circulation will

include the following MDOT Offices and Agencies asked to comment, but it may be extended to include other potentially interested parties:

Internal Clearances:

- a. MDOT Environmental Office;
- b. MDOT Bureau of Planning,
- c. MDOT Bureau of Maintenance and Operations, including Traffic Engineering; and/or
- d. Project Development Program Managers.

External Clearances:

- a. Maine State Housing Authority, if property is suitable for residential use;
  - b. Federal Highway Administration, if acquired with Interstate funds;
  - c. Municipalities; and/or
  - d. Maine Department of Inland Fisheries and Wildlife.
3. The Property Manager, after considering all information, will record the surplus property decision in a memorandum and will also specify conditions, rights to be reserved and manner of disposal.

#### **7-5.04 Process for Disposal of Surplus Property**

The steps presented below define the process of disposing of surplus property. The checklist on Form PM-4 will be used to record the date actions in the process are completed:

1. Surplus property may be offered to a municipality or a State agency for a public use at less than market value or at no cost. The Governor's Deed (see Section 7-5.05) will contain a reversionary clause that will prevent the subsequent private sale of the property if it had been conveyed to the agency at less than market value.
2. A surplus property may be disposed to a former owner at its current value, except that owners having refused offers to purchase under Section 7-5.02 will have the same status to purchase as the general public.
3. MDOT, at its discretion, may offer surplus property to adjacent owners at current fair market value.
4. FHWA approval is required for disposal of real property acquired for the Interstate highway system. The form, content and time of concurrence requests will be determined in consultation with the FHWA Division Office.

5. FHWA approval is required for exceptions to charging fair market value for disposed property if the property was acquired with Federal funds. The MDOT approval request will demonstrate that the exception is in the overall public interest based on the specifically referenced social, environmental or economic purposes, nonproprietary public use (see Item #1. above) or public transportation.
6. In determining the need for FHWA approval, fair market value will be either the approved appraisal or price estimate, the highest acceptable bid or the price negotiated under Item No. 7 below. Properties of nominal value may be offered for an administrative fee.
7. The value of surplus property to be disposed by public bid will be determined in the same manner as property that is acquired for highway right of way. The provisions of Chapters 3 and 4 of this *Manual* apply to surplus property valuations. Waiver of appraisal provisions apply where the value is considered to be less than the appraisal waiver threshold.
8. The surplus property not disposed in accord with Items #1. or #2. above may be offered for sale at public bid or offered for sale with a licensed real estate broker. Bid deposits may be required at the discretion of MDOT. All parties who had previously expressed an interest in purchasing the property will be provided a print or electronic copy of the advertisement. The advertisement will specify a minimum amount as an acceptable bid.
9. The Property Manager will recommend acceptance or rejection of the high bid or rejection of all bids. The reasons for rejection of bids will be recorded in the file. If the high bid is accepted, the successful bidder is notified and forwarded a purchase and sales agreement, if appropriate. Unsuccessful bidders will be notified and their deposits returned.
10. If no bids are received, or if the successful bidder fails to return the executed purchase and sales agreement within a stipulated time, the Department may negotiate for sale with any interested party. If bids are rejected, the Department will wait 7 days before negotiating with interested parties to allow the opportunity for appeal-rejected bids.
11. If the property is listed for sale with a real estate broker, the listing will state "as is" condition. The term of listing and the commission rate will be negotiated on the basis of what is reasonable and typical in the local area.

#### **7-5.05 Conveyance of Surplus Property**

Conveyance of surplus real property will be either by Deed of Vacation or by Governor's Deed. The Deed of Vacation is used to release property to the previous owner or the owner's heirs or assigns. The Governor's Deed is used to convey fee simple interest to any party other than from whom the property was obtained.

The Commissioner of Transportation signs the Deed of Vacation. The Governor signs the Governor's Deed. The Property Manager initiates the preparation of deeds and, after proofreading, the documents are transmitted by the Survey and Mapping Unit to MDOT Office of Legal Services. After Office of Legal Services approval, the documents will be routed through appropriate organizational levels to the Commissioner or the Governor for signature, as follows:

1. Bureau of Project Development;
2. Chief Engineer;
3. Commissioner, for execution;

and if a Governor's Deed:

1. State Budget Office,
2. Governor's Office,
3. Secretary of State Office.

Personal property will be conveyed by Bill of Sale. This applies to the sale of fixtures or improvements (e.g., as portable storage sheds) that are sold for removal from the site.

#### **7-5.06    Revenues**

MDOT will accept payment for property purchase only in certified form. The proceeds from the sale of real estate will be routed to the Bureau of Finance and Administration.

There will be no credit to Federal funds for disposed surplus property from any system if the proceeds representing the Federal share are dedicated to use for projects eligible for Federal funding under Title 23 of the **US Code**.

## **7-6 RENTAL OF PROPERTY OR HIGHWAY AIR SPACE**

The Department may rent real property not needed for highway right of way. The Department may also rent air rights to highway right of way for uses that do not interfere with the safe operation and maintenance of the highway. The rental is subject to the process and restrictions set forth in the following paragraphs.

### **7-6.01 Rental of Property - Not Highway Right of Way**

Property not included in highway right of way may be rented for a specific term if the Property Manager determines that the property will not be needed for transportation purposes for at least 1 year. This determination will be made only after consulting with the appropriate Department personnel.

MDOT may grant a municipality or a public agency a permit to use property for a non-proprietary public purpose at no rent or less than market rent.

The permitted uses and any special limitations will be specified in the rental agreements. The Property Manager will consult with affected or interested parties to determine relevant lease provisions and use limitations.

The Property Manager may authorize rental of property not included in right of way through agreement with a private real estate property management firm.

FHWA approval is required for exceptions to charging fair market rent for property if the property was acquired with Federal funds. The MDOT approval request will demonstrate that the exception is in the overall public interest based on specifically referenced social, environmental or economic benefits, non-proprietary public use or public transportation.

Except as above, the process for rental will be the same as presented in Section 7-3.02 for preconstruction rental of property acquired for right of way.

### **7-6.02 Lease of Highway Air Space**

Highway air space is that space above, below or at the established highway grade line, lying within established right of way limits. The Department will consider proposals for the temporary or permanent use of highway air space that does not interfere with the safe operation and maintenance of the highway facility nor expose users to other hazards, and otherwise are determined to be in the public interest.

The proposed use of highway air space should be reviewed in close coordination and cooperation with the Traffic Engineering Division, Bureau of Project Development, Bureau of Maintenance and Operations and the MDOT Environmental Office. In addition, municipalities and local development and planning agencies should be informed and consulted.

Proposals for the use of Interstate right of way air space require prior FHWA approval and will be processed in accordance with 23 **CFR** 710.405 Air Rights on the Interstate. Interstate air space proposals will also conform to FHWA guidelines at: [www.fhwa.gov/realestate/index.htm](http://www.fhwa.gov/realestate/index.htm) .



## **7-7 PROPERTY MANAGEMENT FOR PROGRAMMATIC GOALS**

### **7-7.01 Access Management**

The MDOT Traffic Engineering Division has issued driveway and entrance permit rules to regulate vehicular access to State highways under 23 **MRSA** 704. The purpose of the rules is to protect public safety, preserve the traffic-carrying capacity of highways, and avoid the long-term cost of constructing new highway capacity. The rules control the number, spacing and placement of new entrances and driveways.

The Department's Access Management Program regulates access by adjacent property owners while protecting the right of reasonable access to the public highway system. The regulation of driveways and entrances is therefore a police power activity, and there is no taking of private property rights under eminent domain authority.

MDOT right of way personnel at all levels will support the access management program and contribute to the efficient administration of the Department's rules by being sufficiently familiar with them to explain their purpose and intent to affected property owners. Technical questions should be referred to the Traffic Engineering Division.

MDOT Traffic Engineering personnel in the Division Offices may be called to participate at on-site meetings or to contact property owners concerning compliance or violations or to encourage shared entrances. This work will be performed under the guidance of the Traffic Engineering Division.

### **7-7.02 Access Control Modifications**

The Maine Legislature enacted 23 MRSA Section 704 to regulate entrances to highways and thereby ensure cost effective and safe highways in the state. This law became effective on September 21, 2001. Section 1-6 provides that the Department of Transportation and the municipalities shall deny ingress to and egress from property abutting the highway when the Department has acquired access rights, except that the Commissioner of Transportation may allow access for the development of State and State-aid highways.

### **7-7.03 Maintenance of Real Property Inventory**

The Mapping Unit maintains a current and continuing inventory of property that is not presently in highway right of way use. The inventory contains property that is used for transportation services (park-and-ride lots) and for environmental protection and enhancement (wetlands) in addition to property that is under lease and available for lease or sale. The following designated categories are inventoried:

Category 1 ..... Licenses

Category 2 ..... Leases

Category 3 .....	Park-and-Ride
Category 4 .....	Wetlands
Category 5 .....	Uneconomic Remnant/Sell to Abutter
Category 6 .....	Hold for Future Highway Purposes
Category 7 .....	Available for Sale
Category 8 .....	Landlocked/Uneconomic Remnants
Category 9 .....	Permits
Category 10 .....	Mitigation (including scenic easements)

The inventory is maintained by the Property Manager and is updated monthly.

#### **7-7.04    Public and Recreational Access at Water Crossings**

MDOT is a party to the interagency Memorandum of Agreement Providing for Public and Recreational Access at Water Crossings and Properties Adjacent to Water. This April 1999 Agreement dedicates the efforts of the Departments of Transportation, Inland Fisheries and Wildlife, Conservation, and Marine Resources to act in committee (Public Recreational Access Committee) to facilitate public access to waterways and property adjacent to waterways.

MDOT staff responsible for property management will cooperate fully in advancing the objectives of the Memorandum of Agreement. In particular the authority of the Department to convey rights or interests to other State agencies will be transferred via a financial order which gives maintenance and supervisory authority of the property to the receiving agency.

#### **7-7.05    Special Use Entrances**

Special use entrances are limited use entrances on control of access segments of highways. The Property Manager will have MDOT personnel field review the special use entrances on an annual basis to ensure that their use restrictions are not violated. The Property Manager will coordinate with the respective MDOT Division Office to remove the source of any violations that are found and will notify the MDOT Office of Legal Services, if necessary.

#### **7-7.06    Relinquishment**

A relinquishment is the conveyance of a portion of highway right of way or facility by MDOT to a local government for continued highway use. MDOT generally relinquishes property when the facility no longer is on the State highway system and can be maintained and controlled more efficiently by a local jurisdiction. The conveyance is by Governor's deed at no cost to the local government. The deed contains a reversionary clause that returns the property to State ownership if it ceases to be used for public highway purpose.

When Federal funds participated in the cost of right of way or the construction the highway facility the provisions of 23 CFR 620 Subpart B apply to a relinquishment. The following facilities may be relinquished only with advance approval of the Federal Highway Administration (FHWA):

1. Frontage roads outside access control lines that serve as ramp connectors or connectors with the local street system.
2. Ramps that serve as connections for interchange of traffic between the Federal aid project and local streets.
3. Property located within the access control lines of any Federally assisted project, or property that includes access control rights.

MDOT will advise the FHWA Maine Division Office of the location of any contemplated relinquishment, allowing sufficient time for the FHWA to make office and field reviews. A description of the reason for the relinquishment, the jurisdictions involved and copies of conveyance documents will be provided to FHWA.

On completing a relinquishment subject to Federal oversight MDOT will send FHWA, for record purposes, a map identifying the location and Federal project number of facilities and real property relinquished,

The Office of Legal Services prepares an agreement with the municipality. The Program Services Mapping Support Unit adds the agreement to the original acquisition document in its Deed File and notes it on MDOT's right of way plans.

Since relinquishments are made to advance the public interest MDOT does not require payment from the local jurisdiction for the value of property transferred.

